

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q62303

Lahcen BENNAI, et al.

Appln. No.: 09/736,298

Group Art Unit: 2416

Confirmation No.: 8442

Examiner: Rhonda L. MURPHY

Filed: December 15, 2000

For: COMMUNICATION METHOD USING ONE ACCESS

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

I. REAL PARTY IN INTEREST

The real party in interest is Alcatel Lucent, the assignee of the application.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-5, 9 and 11-13 are pending in the application.

Claims 4 and 11-13 are rejected under 35 U.S.C. 103(a) as unpatentable over Kobayashi (USP 5,978,380) in view of Kato (USP 6,683,880) and further in view of Kim (USP 4,821,264).

Claims 1-3, 5 and 9 are allowed.

Claims 4 and 11-13 are appealed.

IV. STATUS OF AMENDMENTS

There were no amendments submitted subsequent to the final Office action mailed December 8, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention to which the appealed claims are directed can be described quite simply. A communications link has a plurality of information channels for transmitting voice and data, and also has a signaling channel. According to the invention, there is provided an additional signaling channel, and an order of priority of use of the signaling channels is assigned, and the highest priority signaling channel that is functional is assigned to the access. If the signaling channel in service is congested, the system inhibits functionality of a subset of the information channels.

The inhibition of the functionality of information channels is described in the specification in the paragraph bridging pages 7-8 of the English translation filed August 16, 2001, and is illustrated in Fig. 2 at step 23.

In the context of claim 4, the first access is at (3) in Fig. 1, the plurality of information channels at (4), the signaling channels at (5) and (26), the determining of an order of priority is described at lines 35-37 of page 5, assigning the highest priority functional signaling channel to the access is described at pages 6-7 and illustrated in Fig. 2, and the step of inhibiting functionality of a subset of said information channels if the signaling channel in service is congested is described in the paragraph bridging pages 7-8 and illustrated at step 23 in Fig. 2.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The sole grounds of rejection to be reviewed on appeal is whether or not claims 4 and 11-13 are unpatentable over Kobayashi in view of Kato, and further in view of Kim.

VII. ARGUMENT

Claims 4 and 11-13 Are Not Unpatentable Over Kobayashi In View of Kato and Further In View of Kim.

The examiner relies on Kobayashi to teach the access having plural information channels and at least two signaling channels, and relies on Kato to teach the assignment of priorities to the signaling channels and the use of the highest priority functional signaling channel. For purposes of the present appeal only, applicant will not contest the teachings of these references for the purposes relied on by the examiner.

The remaining feature of claim 1 is at the last few lines of the claim where there is recited the step of inhibiting functionality of a subset of the information channels if the signaling channel in service is congested. The examiner acknowledges that this is not taught in Kobayashi or Kato, and relies on Kim for this teaching.

The examiner cites to lines 2-5 of column 2 of Kim as teaching the inhibiting of functionality of a subset of the information channels if the signaling channel in service is congested. But lines 2-5 of column 2 simply describe that the D channels (signaling channels) could be fully utilized, and in such a case a request for additional **D channel** service may be denied even though there are B channels (information channels) available. This is not limiting functionality of the B channels. It is simply a statement that no further connections can be set up because there are no signaling channels available. Indeed, the statement that the B channels *are* available is directly contrary to the idea that they are made *not* available.

It is possible (although not explained) that the position of the examiner is that the situation described in Kim is one where some of the B channels are in use, some are not, and those that are not cannot be used because there is no capacity left in the signaling channel. Thus, those B channels that are not yet used are a “subset” of the information channels and their functionality is inhibited because no more calls are being set up. If this is the position of the examiner, it is respectfully submitted that it is not based on a reasonable interpretation of the claim language.

Claim 4 recites that the functionality of the information channels is inhibited. In Kim, nothing is done to the information channels, there is no inhibition of them, and they remain available for use whenever the system wishes to use them. Their functionality remains full. The concept of the present invention is that when congestion occurs, something is done to prevent the congestion from getting worse. Kim does not do this, but simply allows calls to be added until no more can be added. Inhibiting the functionality would mean doing something to the information channels so that if the system otherwise tried to add them because there was still technically some capacity in the signaling channel, they could not be added. There is nothing like this that occurs in Kim.

While it is understood that claims during prosecution may be given their broadest reasonable interpretation, it is submitted that it is unreasonable to interpret the claim such that an essential concept of the expression is ignored. Choosing not to use a resource (the B channels) that is there and fully enabled and ready to be used, is not the same as or equivalent to inhibiting the functions that the information channel is able to perform.

For the above reasons, it is submitted that claim 4 patentably distinguishes over the art of record. Claims 11-13 patentably distinguish over the art due to their dependence on claim 4.

Claims 11 and 12 Further Patentably Distinguish Over the Combined Teachings of Kobayashi, Kato and Kim

With respect to claim 11, Kim does not render the subset of information channels unavailable for use in setting up calls. The information channels remain fully available for use in setting up calls, if the system wants to use them.

With respect to claim 12, Kim does not render the subset of information channels unavailable for use in modifying calls that have already been set up. There is no discussion of this whatsoever in Kim.

Conclusion –

For the above reasons, reversal of the examiner is requested.

Respectfully submitted,

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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: August 11, 2009

/DJCushing/
David J. Cushing
Registration No. 28,703

CLAIMS APPENDIX

CLAIMS 1-5, 9 and 11-13 ON APPEAL:

4. A communication method using a first access (3) including a plurality of information channels (4) for transmitting voice and first data and one signaling channel for transmitting signaling signals and second data relating to at least one of said access and said first data, said method further comprising the step of providing at least one additional signaling channel for use in conjunction with at least one of said information channels, determining an order of priority of the use of the signaling channels, and assigning the highest priority functional signaling channel to the access, said method further comprising the step of inhibiting functionality of a subset of said information channels if the signaling channel in service is congested.

11. A method according to claim 4, wherein said step of inhibiting functionality comprises rendering said subset of said information channels unavailable for use in setting up calls.

12. A method according to claim 4, wherein said step of inhibiting functionality comprises rendering said subset of said information channels unavailable for use in modifying calls that have already been set up.

13. A method according to claim 4, wherein said congested signaling channel is incapable of managing all signaling signal transmissions for all information channels of said first access.

EVIDENCE APPENDIX:

There is no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner and relied upon by Appellant in the appeal.

RELATED PROCEEDINGS APPENDIX

There are no decisions rendered by a court or the Board in any proceeding identified about in Section II pursuant to 37 C.F.R. § 41.37(c)(1)(ii).

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Sir:

Submitted herewith please find an Appeal Brief. The statutory fee of \$540.00 for this brief was paid via EFS filing on August 10, 2009. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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